

APPENDIX 52



AGREEMENT FOR SUPPLEMENTAL STAFFING

THIS AGREEMENT FOR SUPPLEMENTAL STAFFING SERVICES ("Agreement") is made and entered into by and between Nursestaffing LLC dba Nurses 24/7 located at 1700 Route 23 North, Wayne, NJ 07470 ("Agency") and Wyckoff Heights Medical Center and Caritas Healthcare Inc. (Hospital) RECITALS:

- A. Agency is a licensed temporary staffing agency in the business of providing supplemental staffing to medical care providers such as Hospital ("Services").
- B. Health Care System operates a group of acute care facilities known as Wyckoff Heights Medical Center and Caritas Healthcare Inc. ("Facility") in the State of NY ("State").
- C. Agency provides Hospital, when requested and on a non-exclusive basis, supplemental staffing.

NOW THEREFORE, in consideration of the recitals above and the mutual covenants and conditions contained herein, Agency and Hospital agree as follows:

1. AGENCY OBLIGATIONS

- a. Upon request by Hospital, Agency shall use its best efforts to assign temporary, supplemental personnel (herein after "Staff") to Hospital in full compliance with all the provisions of this Agreement.
- b. This Agreement does not constitute an exclusive engagement of Agency's services by Hospital or a promise by Hospital to meet all of its supplemental staffing needs through Agency. Agency is not prohibited from assigning Staff to other entities.
- c. Agency agrees to provide Hospital competent Staff as requested by Hospital to meet Hospital's supplemental staffing needs. Prior to referring Staff to Hospital, Agency shall carefully screen Staff to determine their qualifications and competence in accordance with the terms of the Agreement.

Proof from Agency that Staff meets all the criteria established in the code will be made immediately available to Hospital by Agency by request. Hospital may, at its sole discretion, require Staff to complete additional skills or knowledge based tests.

- d. Agency agrees to have Staff available for Hospital twenty-four (24) hours per day, seven (7) days per week. Agency's obligation to provide requested Staff is limited by the availability to Agency of Staff who are ready, willing and able to accept a Hospital assignment.
- e. Staff will professionally, ethically, and diligently carry out their responsibilities hereunder in order to serve the best interest of Hospital's patients and Hospital.

2. REQUESTS FOR STAFF

- a. Hospital shall use its best efforts to request staff at least four (4) hours prior to the applicable reporting time. If Hospital requests a particular person, Agency shall assign that person to Hospital if the person is available, satisfies the criteria for Staff, and is ready, willing and able to work.

BQHC 56107

CONFIDENTIAL

b. Prior to two (2) hours before the scheduled start of a shift or assignment, Hospital may change or cancel a request for Staff without incurring any liability to Agency. It shall be Agency's responsibility to contact Staff whenever Hospital changes or cancels any request for Staff.

c. When Hospital cancels a request for Staff less than two (2) hours before the scheduled start of a shift or assignment, and Staff cannot be contacted by Agency prior to reporting to Hospital to work, Hospital will either pay Agency for four (4) hours per the rate structure for that Staff in effect at the time of cancellation or utilize Staff for four (4) hours. Agency shall be solely responsible for satisfying any reporting time pay obligations due Staff under state or federal wage and hour laws.

d. There can be no canceling or shortening of scheduled hours once nurse arrives at Hospital.

3. **ASSIGNMENTS, TRAINING AND POLICIES AND PROCEDURES**

a. Hospital has and retains the sole discretion to assign duties, shifts, units, assignment, etc. to Staff during hours worked at the Hospital.

b. Hospital shall communicate its dress code requirements to Agency. Staff assigned to Hospital will comply with these requirements and must appear professional at all times.

c. If Hospital concludes, in its sole discretion, that Staff assigned to Hospital by Agency are not performing their duties in a satisfactory manner or that Staff otherwise fails to satisfy the criteria for Staff, said Staff shall not be permitted to continue working at Hospital and Hospital shall pay only for time worked.

d. Staff initially requested for a particular area may be assigned to other areas by Hospital after arriving at Hospital, subject to Staff's professional qualifications and competencies. If Staff refuses an assignment and Staff has not commenced work, Hospital shall not owe agency any amounts in connection with said Staff. If Staff refuses an assignment after commencing work, Hospital shall owe Agency amounts only for actual hours worked by Staff and shall not owe any penalties or other fees as a result of any termination of Staff's assignment.

e. While working at Hospital, Staff must comply with all applicable state and federal laws and regulations, and with all Hospital policies and procedures.

f. Hospital shall provide written information to Agency for the purpose of orienting Staff prior to their first assignment at Hospital. This information shall be provided to Staff by Agency and shall address relevant Hospital policies and methods of delivering care. When Staff first commences work at Hospital, Hospital shall provide Staff with information about the location of emergency exits, how to call an emergency, the locations of the emergency charts and other information that Hospital requires Staff to know.

4. **EMPLOYMENT STATUS OF STAFF**

a. Staff assigned by Agency to Hospital are under this Agreement are employees of Agency and are not employees of Hospital.

b. Agency has, retains, and will continue to bear sole, exclusive, and total legal responsibility as the employer of Staff. This responsibility shall include, but not be limited to, the obligation to ensure full compliance with and the satisfaction of (i) all state and federal payroll, income and unemployment tax requirements; (ii) all state and federal wage and hour requirements; (iii) all worker's compensation insurance requirements arising from Agency's employment of Staff, the assignment of Staff to Hospital and/or the actual work of Staff at Hospital.

c. Agency agrees to hold Hospital harmless, and fully indemnify Hospital against any and all legal claims asserted against Hospital or its shareholders, officers, directors, agents, employees, servants or assigns, and/or liabilities imposed against Hospital, its shareholders, officers, directors, agents, employees, servants or assigns that are predicated in any matter on a finding by any court, enforcement agency, government entity, arbitrator or other adjudicator that Staff are joint employees of Agency and Hospital.

BQHC 56108

CONFIDENTIAL

NO. 3390 P. 6

5. **AGENCY HIRING AND DISCIPLINE OF STAFF**

- a. Agency shall not unlawfully discriminate against its employees, contractors, Staff or agents and will fully comply with any and all applicable local, state, and federal anti-discrimination and employment related regulations, statutes, and judicial decisions.
- b. Agency shall immediately investigate any complaint against Staff received by Agency or Hospital or made by Hospital. A written report, stating the complaint was investigated and Agency's action, if appropriate, shall be filed with Hospital within ten (10) working days of the complaint.
- c. Agency shall treat all Staff assigned to Hospital as employees for federal, state and local tax withholding purposes and not as independent contractors.

6. **FEES AND INVOICING**

- a. Hourly rates charged Hospital for each category of employees are set forth in Exhibit A. These rates shall be effective for twelve (12) months, beginning on the effective date of this Agreement. Exhibit A is subject to renegotiation every renewal period of this Agreement. During such negotiations, the most recent rate structure shall remain in effect until a new structure is agreed upon.
- b. Agency will invoice Hospital for services provided hereunder each week for services rendered the previous week. Agency week covers Sunday through Saturday.

Our invoices are rendered weekly. Our fees are payable upon receipt of the invoice. If there are any questions concerning the invoice or if payment will be different from that invoiced, please let us know immediately so that we can promptly resolve the matter. If we do not receive payment within 60 days, we reserve the right to charge interest on the outstanding balance of the account at a rate equal to the lesser of (i) 2.0% per month, or (ii) the highest lawful rate, until paid.

c. If Hospital hires an employee that agency has introduced during the term of the contract, Hospital will pay a fee to agency of 20% of employees first year annualized gross income at hospital. These terms will remain in affect for one year after employees last scheduled shift.

d. Holiday rates listed on the rate schedule (Exhibit A) shall be applicable on the following holidays:

- (1) New Year's Day {11-7(eve), 7-3, 3-11}
- (2) Easter Sunday
- (3) Memorial Day
- (4) July 4th
- (5) Labor Day
- (6) Thanksgiving Day
- (7) Christmas Day {11-7(eve), 7-3, 3-11}

BQHC 56109

CONFIDENTIAL

7. INSURANCE

Agency shall purchase and maintain during the duration of this Agreement the following insurance coverage:

- a. Worker's Compensation and employer's liability coverage for Agency's legal and statutory obligations for damages due to bodily injuries either by accident or disease, occurring to Agency's employees, agents or servants as a result of employment.
- b. Agency, at no cost or expense to Hospital, shall carry a policy or policies of professional liability and general liability insurance, issued by an insurance carrier acceptable to Hospital, providing coverage in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) aggregate per year, which insures Contractor and each employee or agent thereof against any act, error or omission of the Contractor or Contractor's Personnel, agent or employee.
- c. Unemployment insurance is required by law for all employees.
- d. Agency shall provide at Hospital's request certificates of Insurance as evidence that all coverage required under this Agreement have been obtained and are in full force and effect.

8. TERM AND TERMINATION

The initial term of this Agreement shall be one (1) calendar year, commencing on date of execution and will renew automatically.

a. **Termination without cause.** This agreement may be terminated by either party, at anytime, for any reason, upon thirty (30) days written notice to the other party for cause or no cause.

b. **Effect of Termination.** As of the effective date of termination of this Agreement, neither party shall have any further rights or obligations hereunder except; (1) as otherwise provided herein; (2) for rights and obligations accruing prior to such effective date of termination; or (3) arising as a result of any breach of this Agreement.

9. SURVIVAL OF CERTAIN OBLIGATIONS. Termination of this Agreement shall not affect any obligation of either party that has accrued prior to such termination.

10. ENTIRE AGREEMENT; MODIFICATION. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement.

11. GOVERNING LAW. This Agreement shall be construed in accordance with the laws of the State of New York. The provisions of this Paragraph shall survive expiration or their termination of this Agreement regardless of the cause of such termination.

12. WAIVER. A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

13. Notices. Any notice to be made in connection with this Agreement shall be in writing and shall be deemed effectively given when delivered in person or sent by registered or certified mail, by one party to the other, as follows: All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested or by overnight courier and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid or deposited with the overnight couriers addressed as follows:

If to Hospital:

Renee Mauriello
St. John's Queen's Hospital
90-02 Queens Blvd.
Elmhurst, NY 11373

If to Agency:

Nurse Staffing LLC, dba Nurses 247
Kevin Malecki
1700 Route 23 North
Suite 100
Wayne, NJ 07470

BQHC 56110

CONFIDENTIAL

NO. 3390 P. 8

or to such other persons or places as either party may from time to time designate by notice pursuant to this Paragraph.

14. INDEMNIFICATION.

a) Agency shall save and hold Hospital and its shareholders, officers, directors, agents, employees, servants, or assigns harmless from and against, and shall indemnify Hospital, its shareholders, officers directors, agents, employees, servants or assigns for any liability, loss, cost, expense or damage whatsoever by reason of any injury sustained to any person or property by reason of any act, neglect, default or omission of Agency or any of its agents, subcontractors, employees or other representatives.

b) Hospital shall save and hold Agency and its shareholders, officers, directors, agents, employees, servants, or assigns harmless from and against, and shall indemnify Agency, its shareholders, officers directors, agents, employees, servants or assigns for any liability, loss, cost, expense or damage whatsoever by reason of any injury sustained to any person or property by reason of any act, neglect, default or omission of Hospital or any of its agents, subcontractors, employees or other representatives.

15. CONFIDENTIALITY

a) **Hospital Information.** Agency recognizes and acknowledges that, by virtue of entering into this Agreement and providing Services to Hospital hereunder, Agency and Staff may have access to certain information of Hospital that is confidential and constitutes valuable, special and unique property of Hospital. Agency agrees that neither Agency nor any Staff will at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Hospital's express prior written consent, except pursuant to Agency's and Staff's duties hereunder, any confidential or proprietary information of Hospital, including, but not limited to, information which concerns Facility's patients, costs, or treatment methods developed by Hospital for the Facility, and which is not otherwise available to the public.

Agency Information. Hospital recognizes and acknowledges that, by virtue of entering into this Agreement, Hospital may have access to certain information of Agency that is confidential and constitutes valuable, special and unique property of Agency, specifically, but not limited to, compensation pay rates and bonus compensation programs for Staff. Hospital agrees that it will not at any time, either during or subsequent to the term of this Agreement, disclose to others, use, copy or permit to be copied, without Agency's express prior written consent, any confidential or proprietary information of Agency.

b) **Terms of this Agreement.** Except for disclosure to legal counsel, accountant or financial advisors, neither Hospital nor Agency shall disclose the terms of this Agreement to any person who is not a party or signatory to this Agreement, unless disclosure thereof is required by law or otherwise authorized by this Agreement or consented to by the other party.

c) **Patient Information.** Agency or Staff shall not disclose to any third party, except where permitted or required by law or where such disclosure is expressly approved by Hospital, any patient or medical record information regarding Facility patients, and Agency and Staff will comply with all federal and state laws and regulations, and rules and policies of the Hospital, regarding the confidentiality of such information.

BQHC 56111

CONFIDENTIAL

NO. 3390 P. 9

16. **DISCLOSURE**

Agency will notify Hospital within three (3) business days if Agency's license in the State lapses or is denied, suspended, revoked, terminated or made subject to terms of probation or other restriction.

17. **LEGAL EVENT**

Notwithstanding any other provision of this Agreement, if the governmental agencies that administer the Medicare, Medicaid or other federal programs, or any other federal state or local governmental or non-governmental agency, or any court of administrative tribunal passes, issues or promulgates any law rule regulation, standard, interpretation, order, decision or judgment, including but not limited to those relating to any regulations pursuant to state or federal anti-Kickback or self-referral statutes which in good faith judgment of one part materially or adversely affects either party's licensure, accreditation, certification or ability to refer, to accept any referral, to bill, to claim, to present bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or non-governmental payer, or which subjects the parties to a risk of prosecution of civil monetary penalty, or which, in the good faith judgment of the party, indicates a rule or regulations which the Party desires further compliance, then either Party may give the other party notice of intent to amend or terminate this Agreement.

18. **ASSIGNMENT**

Agency or Hospital shall not assign or transfer, in whole or in part, this Agreement or any rights, duties obligations under this Agreement without the prior consent of the other party, and any assignment or transfer without consent shall be null and void.

19. **SEVERANCE**

If any part of this Agreement is held by a court of competent jurisdiction of state or federal law to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect.

20. **AGENCY'S STATUS**

Agency and all Staff shall act at all times under this Agreement as independent contractors. The parties agree that Hospital shall not exercise any control or direction over the manner of method by which all Staff provides the Services. However, Agency shall require all Staff to perform at all times in accordance with currently approved methods and standards of practice for Services in the medical community.

The parties hereto have executed this Agreement on the 29 day of January, 20 08

Nurse Staffing, LLC dba Nurses 247

By:

Kevin Malecki

Regional Business Development Manager

Brooklyn Queens Health Care, Inc

By: Renee Mancello

Name Renee Mancello

Title V-P Nursing

BQHC 56112

CONFIDENTIAL